

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

LUCIA T. FAITHFULL

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1978 and 1979.

Petitioner, Lucia T. Faithfull, c/o Bonsal, St. Mary's Church Road,
Bedford, New York 10506, filed a petition for redetermination of a deficiency
or for refund of personal income tax under Article 22 of the Tax Law for the
years 1978 and 1979 (File No. 59536).

On February 19, 1986, petitioner waived a hearing in this matter and
submitted the case to the State Tax Commission for decision based on the Audit
Division file, an affidavit and exhibits. Upon review of said file and documents,
the State Tax Commission renders the following decision.

ISSUE

Whether petitioner is entitled to a refund of personal income tax under
section 697(d) of the Tax Law.

FINDINGS OF FACT

1. During 1978 and 1979, petitioner, a New York resident, was a beneficiary
of a California trust. The managing trustee of the trust resided in California
and the principal assets of the trust consisted of property located in the
State of California and leased to entities known as "Argo Petroleum" and
"Condor". During 1978 and 1979, petitioner received royalty income from the
trust of \$25,472.00 and \$30,000.00, respectively.

2. Petitioner timely filed New York State income tax resident returns for the years 1978 and 1979 on which she included the aforementioned royalties in New York taxable income and paid New York tax thereon. The property was described on the returns as "Turner Trust Estate, 2410 Beverly Blvd., Los Angeles, CA 90057".

3. In April, 1983, petitioner received a letter from the California Franchise Tax Board advising her that she should have filed California tax returns for the years 1978 through 1982. The State of California subsequently assessed income tax based on the income received by petitioner from the trust during those years.

4. On November 8, 1983, petitioner filed California tax returns for the years 1978 and 1979 and paid the tax due, plus interest.

5. On November 28, 1983, petitioner filed amended New York State income tax returns for 1978 and 1979, claiming resident credits of \$1,753.21 and \$2,341.91 for those respective years, based on the taxes paid to the State of California. Petitioner's requested refunds for amounts equal to the credits were denied by the Audit Division on the grounds that the statute of limitations for each refund had expired. Petitioner then filed the petition herein and requests that, although the respective periods of limitation have expired, the State Tax Commission exercise the special refund authority set forth in subdivision (d) of section 697 of the Tax Law.

CONCLUSIONS OF LAW

A. That section 687(a) of the Tax Law provides, in pertinent part, as follows:

"Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed, within two years from the time the tax was paid...".

Accordingly, the periods of limitation for the refunds claimed by petitioner had expired prior to the time claim was made.

B. That section 697(d) of the Tax Law provides as follows:

"(d) **Special** refund authority. -- Where no questions of fact or law are involved and it appears from the records of the tax commission that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this article, the tax commission at any time, without regard to any period of limitations, shall have the power, upon making a record of its reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded and to issue therefor its certificate to the comptroller."


C. That although the New York State income tax resident returns filed by petitioner for the years 1978 and 1979 show that there was royalty income from a trust estate with a California address, the returns did not show that tax had been paid to the State of California or, in fact, that the royalty income was even taxable by the State of California. Accordingly, there was a question of fact or law in existence upon the expiration of the statute of limitations and petitioner is not entitled to a refund under section 697(d) of the Tax Law.

D. That the petition of Lucia T. Faithfull is denied and the disallowance of refund is sustained in full.

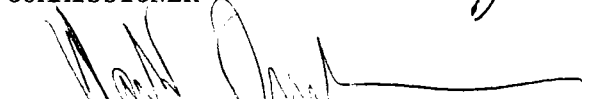
DATED: Albany, New York

STATE TAX COMMISSION

MAR 11 1987


PRESIDENT


COMMISSIONER


COMMISSIONER